

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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USNRC

'84 AGO -8 A10:50

Before the Atomic Safety and Licensing Board

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

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| In the Matter of |) | |
| |) | |
| Philadelphia Electric Company |) | Docket Nos. 50-352 06 |
| |) | 50-353 02 |
| (Limerick Generating Station, |) | |
| Units 1 and 2) |) | |

APPLICANT'S MOTION TO STRIKE AWPP PLEADING
AND REPLY TO AWPP MOTION RELATING
TO CONTENTION VI-1

On July 25, 1984, intervenor Air and Water Pollution Patrol filed "AWPP (Romano) Response to NRC Staff Response Regarding Gross Alpha Contention by AWPP."^{1/} To the extent it purports to be a reply to Staff and Applicant's answers to "New AWPP (Romano) Contention Re Gross Alpha (June 26, 1984)," it is prohibited by 10 C.F.R. §2.730(c).^{2/} As a prohibited pleading, it should be stricken.^{3/}

1/ While the cover letter purports to have served "the latest service list," presumably on the date of the letter July 25, 1984, Applicant only received a copy on July 30, 1984 which had been sent on July 27, 1984 via Express Mail.

2/ The Detroit Edison Company (Enrico Fermi Atomic Plant, Unit 2), ALAB-469, 7 NRC 470, 471 (1978).

3/ Id.

DS03

On page 4 of its pleading, AWPP moves the Board to require the Applicant and Staff "be made to explain" an item in an attachment to an April 18, 1984 memorandum to the NRC Commissioners from Darrell Eisenhut, Director, Division of Licensing, Office of Nuclear Reactor Regulation. Applicant opposes the motion as being late and entirely without basis.^{4/}

Initially, any request for the Board to consider any matter contained in Board Notification No. 84-049 is manifestly late inasmuch as this document was served on the parties in April. AWPP has failed to show good cause as to why it waited 3½ months before bringing this matter to the attention of the Licensing Board. In any event, the subject of Board Notification No. 84-049 is Limerick welder qualification. Item 4 on page 6 of Enclosure 3 to this memorandum is not addressed in this Board notification; it only incidently happened to be discussed on the same page of the inspection report as Item 5, involving welder testing and training, which was the subject of the memorandum. Item 4 was a matter discovered by Applicant's quality assurance organization and was made an unresolved item for the NRC inspector to review Applicant's evaluation and corrective action.

^{4/} The Appeal Board has held that no affirmative relief may be requested in a pleading unless the title
(Footnote Continued)

The pages in question are from Inspection Report 352/83-08 and 353/83-05 which was dated June 29, 1983. Mr. Romano was given this inspection report as part of discovery on November 1, 1983 (Discovery 14). Thus, AWPP has had access to this document for over 8 months and faces an almost insurmountable task in showing why he did not raise this matter as one of the specific incidents supporting Contention VI-1.^{5/} AWPP has not even addressed this point in its pleading.

If treated as a late-filed contention, AWPP has failed to address the criteria, let alone meet his burden to affirmatively demonstrate that he has met the criteria, contained in 10 C.F.R. §2.714 for acceptance of late-filed contentions. See Applicant's Answer to New Proposed Contention by Air & Water Pollution Patrol relating to "Gross Alpha" (July 10, 1984) at 2-6. There is absolutely no showing of good cause to justify the late filing. AWPP has shown no real ability to assist the Board in the litigation of this matter which, if accepted, would lead to significant delays in this proceeding.

(Footnote Continued)

reflects such request. Duke Power Company (Cherokee Nuclear Station, Units 1, 2 and 3), ALAB-457, 7 NRC 70, 71 (1978).

5/ If AWPP's pleading is treated as a motion to reopen the record, it does not even address the criteria for granting such relief. See, e.g., Applicant's Answer to Request by Del-Aware Unlimited, Inc. to Set Aside the
(Footnote Continued)

The matter concerning Inspection Report 352/76-09-03 dated October 15, 1976 is some 8 years old.^{6/} It involves voids in the concrete surrounding the containment liner and welding performed on the drywell liner to effect inspection and bears no relationship to welding to the reactor vessel, the subject of Item 4 of Inspection Report 352/83-08. In any event, the Board has previously denied a contention relating to this matter.^{7/} No reason to change the Board's previous ruling has been given.

For the above stated reasons, the pleading should be stricken and the motion concerning Contention VI-1 should be denied.

Respectfully submitted,

CONNER & WETTERHAHN, P.C.



Mark J. Wetterhahn
Counsel for Applicant

August 7, 1984

(Footnote Continued)

Partial Initial Decision on Supplementary Cooling Water System Contentions at 7-14 (May 30, 1984). Judged by these standards, the instant motion must fail.

^{6/} AWPP pursued discovery concerning this matter as far back as September 3, 1982 (see Item 2 of letter from Frank Romano to Troy B. Conner, Jr. and April 6, 1983 letter from Mark J. Wetterhahn to Frank R. Romano (Discovery 6)).

^{7/} See Tr. 4911-12 (October 18, 1983) and Memorandum and Order Confirming Rulings Made at Prehearing Conference (October 28, 1983) (slip op. at 6).

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CERTIFICATE OF SERVICE

I hereby certify that copies of "Applicant's Motion to Strike AWPP Pleading and Reply to AWPP Motion Relating to Contention VI-1" dated August 7, 1984 in the captioned matter have been served upon the following by deposit in the United States mail this 7th day of August, 1984:

Lawrence Brenner, Esq. (2)
Atomic Safety and Licensing
Board
U.S. Nuclear Regulatory
Commission
Washington, D.C. 20555

Dr. Richard F. Cole
Atomic Safety and
Licensing Board
U.S. Nuclear Regulatory
Commission
Washington, D.C. 20555

Dr. Peter A. Morris
Atomic Safety and
Licensing Board
U.S. Nuclear Regulatory
Commission
Washington, D.C. 20555

Atomic Safety and Licensing
Appeal Panel
U.S. Nuclear Regulatory
Commission
Washington, D.C. 20555

Docketing and Service Section
Office of the Secretary
U.S. Nuclear Regulatory
Commission
Washington, D.C. 20555

Ann P. Hodgdon, Esq.
Counsel for NRC Staff Office
of the Executive
Legal Director
U.S. Nuclear Regulatory
Commission
Washington, D.C. 20555

Atomic Safety and Licensing
Board Panel
U.S. Nuclear Regulatory
Commission
Washington, D.C. 20555

Philadelphia Electric Company
ATTN: Edward G. Bauer, Jr.
Vice President &
General Counsel
2301 Market Street
Philadelphia, PA 19101

Mr. Frank R. Romano
61 Forest Avenue
Ambler, Pennsylvania 19002

Mr. Robert L. Anthony
Friends of the Earth of
the Delaware Valley
106 Vernon Lane, Box 186
Moylan, Pennsylvania 19065

Charles W. Elliott, Esq.
Brose and Postwistilo
1101 Building
11th & Northampton Streets
Easton, PA 18042

Miss Maureen Mulligan Limerick
Ecology Action P.O. Box 761
762 Queen Street Pottstown, PA
19464

Zori G. Ferkin, Esq.
Assistant Counsel
Commonwealth of Pennsylvania
Governor's Energy Council
1625 N. Front Street
Harrisburg, PA 17102

Jay M. Gutierrez, Esq.
U.S. Nuclear Regulatory
Commission
631 Park Avenue
King of Prussia, PA 19406

Angus Love, Esq.
107 East Main Street
Norristown, PA 19401

Robert J. Sugarman, Esq.
Sugarman, Denworth &
Hellegers
16th Floor, Center Plaza
101 North Broad Street
Philadelphia, PA 19107

Director, Pennsylvania
Emergency Management Agency
Basement, Transportation
and Safety Building
Harrisburg, PA 17120

Martha W. Bush, Esq.
Kathryn S. Lewis, Esq.
City of Philadelphia
Municipal Services Bldg.
15th and JFK Blvd.
Philadelphia, PA 19107

Spence W. Perry, Esq.
Associate General Counsel
Federal Emergency
Management Agency
500 C Street, S.W., Rm. 840
Washington, DC 20472

Thomas Gerusky, Director
Bureau of Radiation
Protection
Department of Environmental
Resources
5th Floor, Fulton Bank Bldg.
Third and Locust Streets
Harrisburg, PA 17120

James Wiggins
Senior Resident Inspector
U.S. Nuclear Regulatory
Commission
P.O. Box 47
Sanatoga, PA 19464

Timothy R.S. Campbell
Director
Department of Emergency
Services
14 East Biddle Street
West Chester, PA 19380



Mark J. Wetterhahn